

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric Company (PG&E) pursuant to the Commission's Alternative Plan of Reorganization under Chapter 11 of the Bankruptcy Code for PG&E, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Company, Case No. 01-30923 DM.

(U 39 M)

Investigation 02-04-026
(Filed April 22, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING
THE MOTION BY THE OFFICE OF RATEPAYER ADVOCATES
TO STRIKE CHAPTER 11 OF PACIFIC GAS
AND ELECTRIC COMPANY'S PREPARED TESTIMONY**

On July 25, 2003, Pacific Gas and Electric Company (PG&E) submitted its prepared testimony in the above-captioned proceeding; on August 8, it amended Chapter 11 (Rate Proposal) of that testimony. The Office of Ratepayer Advocates (ORA) moves to strike Chapter 11 of PG&E's prepared testimony on the basis that section 2(b) of the Scoping Memo specifically excludes issues of rate allocation and design; those issues are addressed in Chapter 11. The relevant portion of the Scoping Memo sets forth the issues to be considered and excluded from this proceeding, stating:

1. Scope of this proceeding: This proceeding is limited to determining whether the proposed Settlement Agreement (S.A.) sponsored by Pacific Gas and Electric Company (PG&E), PG&E Corporation, and the Commission staff, and filed with the

Commission on June 24, 2003, should be approved by the Commission.

2. Excluded from the Scope: . . . (b.) Rate allocation and rate design.
See, I.02-04-026 July 14, 2003 Scoping Memo at p. 1. (Emphasis added.)

ORA argues that striking Chapter 11 will clearly indicate that rate allocation and design are not issues in this proceeding. ORA says that this information is crucial for it to make key decisions on how to employ its resources in this highly expedited proceeding.

PG&E opposes ORA's motion. It argues that if approved, the Settlement Agreement requires a rate change effective January 1, 2004, and contemplates that, as shown in the testimony ORA seeks to strike, the rate change, is estimated at a \$407 million reduction. This is one of the significant benefits of the Settlement Agreement, in PG&E's opinion. PG&E believes that with a decision on the Settlement Agreement itself scheduled on December 18, 2003, less than two weeks before the January 1, 2004 rate reduction, retaining Chapter 11 and addressing the Settlement Agreement's anticipated rate reduction now is the most effective way to maximize the Commission's decision making flexibility on the Settlement Agreement.

PG&E says that granting the motion would hinder the Commission's ability to consider an aspect of the Settlement Agreement that is important to customers and the Commission. PG&E agrees with ORA that this proceeding is not the place to litigate major revenue allocation and rate design issues routinely included in Phase 2 of the utilities' general rate cases (GRC), but Chapter 11 is limited to implementation of the January 1, 2004 rate reduction. Issues regarding PG&E's overall rate design will be addressed in Phase 2 of PG&E's GRC, which is scheduled to be filed on February 6, 2004. Retaining PG&E's testimony on the

rate reduction impacts and allowing other parties to address the same issue is the only way to achieve a rate reduction on January 1, 2004, as proposed by the Settlement Agreement.

The Utility Reform Network supports ORA for the reasons stated in ORA's motion, as does the California Farm Bureau Federation. The California Large Energy Consumers Association, the California Manufacturers and Technology Association, and the Electricity Producers and Users Coalition support PG&E for the reasons stated in PG&E's opposition. Consumers Union filed a response but takes no position on the motion, recognizing the importance of rate design in the consideration of this case.

I will grant ORA's motion to strike Chapter 11. Chapter 11 incorporates the issues of rate allocation and rate design. Section 2(b) of the Scoping Memo specifically excludes rate allocation and rate design from the issues to be considered. It is premature to consider the issues raised in Chapter 11. If PG&E is allowed to put forward a rate proposal, other parties will seek to put forward their own rate proposals, each of which may be very different from PG&E's. I cannot accommodate consideration of the wide variety of proposals that may be put forward on those issues in order to reach a decision by the end of this year.

PG&E states that it is discussing with the parties settlement of rate allocation and rate design issues. My ruling here is not to be interpreted as impeding those discussions. I encourage settlement of rate allocation and rate design issues. A Rule 51 settlement sponsored by the major parties filed after hearings are completed would be welcome.¹ See, for example, the decision

¹ I express no opinion on whether the proposed Settlement Agreement now before the Commission will be approved, nor the amount of the rate reduction, if any. The parties will have to make their own assumptions.

approving a settlement lowering Southern California Edison Company's rates by \$1.25 billion (Decision 03-07-029 in Application 03-01-019).

Now therefore, good cause appearing, **IT IS RULED** that the Office of Ratepayer Advocates' Motion to Strike Chapter 11 of Pacific Gas and Electric Company's Prepared Testimony is granted (both the July 25 and August 8 versions).

Dated August 19, 2003, at San Francisco, California.

/s/ ROBERT BARNETT

Robert Barnett
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Granting the Motion by the Office of Ratepayer Advocates to Strike Chapter 11 of Pacific Gas and Electric Company's Prepared Testimony on all parties of record in this proceeding or their attorneys of record.

Dated August 19, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

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